

***United States Court of Appeals  
for the  
District of Columbia Circuit***



**TRANSCRIPT OF  
RECORD**



# TRANSCRIPT OF RECORD.

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## Court of Appeals, District of Columbia

JANUARY TERM, 1905.

No. 1516.

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TEODOZIA MICHALOWICZ, APPELANT,

*vs.*

STANISLAUS MICHALOWICZ AND MARTHA JOHNSON,

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APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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FILED FEBRUARY 8, 1905.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

JANUARY TERM, 1905.

No. 1516.

TEODOZIA MICHALOWICZ, APPELLANT,

vs.

STANISLAUS MICHALOWICZ AND MARTHA JOHNSON.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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# In the Court of Appeals of the District of Columbia.

TEODOZIA MICHALOWICZ, Appellant, }  
vs. } No. 1516.  
STANISLAUS MICHALOWICZ ET AL. }

a Supreme Court of the District of Columbia.

TEODOZIA MICHALOWICZ, Complainant, }  
vs. } No. 24298. In Equity.  
STANISLAUS MICHALOWICZ, Defendant, }  
Martha Johnson, Co-respondent. }

UNITED STATES OF AMERICA, { ss :  
District of Columbia, }

Be it remembered, that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above entitled cause, to wit:

1 *Bill of Complaint.*

Filed Nov. 9, 1903.

In the Supreme Court of the District of Columbia, Holding a Special Term for Equity Business.

TEODOZIA MICHALOWICZ, Complainant, }  
vs. } Equity. No. 24298,  
STANISLAUS MICHALOWICZ, Defendant, MARTHA } Dock. 54.  
Johnson, Co-respondent. }

To the honorable the justice of the equity court:

The bill of complaint of Teodozia Michalowicz respectfully shows to the court:

1. That she is a citizen of the United States and a resident of the District of Columbia, and has been such resident for more than three years last past, and brings this suit in her own right.

2. That the defendant, Stanislaus Michalowicz, is a citizen of the United States and now a resident of the city of Chicago, in the State

of Illinois, and is sued in his own right as the husband of the complainant, for a divorce from the bonds of marriage with her, upon the ground of adultery. Your complainant has no personal knowledge of the citizenship of the co-respondent, Martha Johnson who is named as a defendant herein, but believes that she now resides in Rosslyn, Alexandria county, State of Virginia, and the said co-respondent is sued in her own right as one of the persons with whom the defendant, Stanislaus Michalowicz, committed adultery.

3. That to wit on the 4th day of July, 1898, in the city of Baltimore, in the State of Maryland, your complainant was law-  
2 fully joined in the bonds of marriage with the defendant, Stanislaus Michalowicz. The ceremony was performed by Reverend Dr. Miaczylon Barabasz, pastor of the Holy Rosary Roman Catholic church, of the city of Baltimore, State of Maryland. The said pastor was duly authorized to solemnize the rites of marriage in the city and State aforesaid. There was born to said complainant and defendant two children, whose ages are respectively three years and fourteen months.

4. That for a long time after the marriage your complainant and defendant lived together in the city of Washington, District of Columbia, during which time your complainant demeaned herself as a true, loving and faithful wife, and properly performed all the duties incumbent on her as such: but notwithstanding the premises, however, the said defendant did not long continue to perform his duties as a husband to your complainant, but grossly violated his marriage vows and obligations. That on, to wit, the 2nd day of Jan'y, A. D. 1902 the said defendant, without cause, wilfully and wrongfully deserted and abandoned your complainant; that sometime after the desertion of your complainant, your complainant, for the sake of her child, undertook to return to the defendant, and did return for a short while, and while living and cohabiting with the defendant she became quite ill, and upon examination it was discovered she had contracted a venereal disease, which, as she discovered later, her husband had contracted from the co-respondent, who resided at that time in Alexandria county, State of Virginia; that she was examined by two physicians, who made a special investigation,  
3 and who knew the condition of her husband, who informed her that it was the disease which her husband had been suffering from.

5. Your complainant shows to this court that the defendant on many occasions visited the said co-respondent at her home in Virginia, as well as in the District of Columbia, and is advised and believes that the said defendant is cohabiting with the said co-respondent, and that the said defendant on the — day of June A. D. 1902, at Rosslyn and at divers other places, committed adultery with the said co-respondent and with divers other women, who are unknown to your complainant.

6. Your complainant shows to this honorable court that the defendant is in the life insurance business in the city of Chicago, State

of Illinois, and is making and earning about \$75.00 per month, and that your complainant has no means of support and is unable, on account of having two small children, to earn any money for the support of herself and children.

7. Your complainant further charges that on, to wit, the — day of June A. D. 1902, and at divers times between the months of June and Sept. A. D. 1902 the said defendant was carnally intimate and committed adultery with the said co-respondent, and that he committed adultery at divers other times and places with the said co-respondent and with several other women, unknown to your complainant, all of which said adultery was committed without the consent, connivance, privity or procurement of the petitioner, and after discovery of the offense the petitioner has not voluntarily cohabited with the defendant.

4 Wherefore, the premises considered, petitioner prays as follows:

First. That the defendant, Stanislaus Michalowicz, and the co-respondent, Martha Johnson be served with process of subpoena by this court, commanding each of them to appear and answer the exigencies of this bill of complaint.

Second. That your complainant, Teodozia Michalowicz, be divorced from the bonds of marriage to the said defendant, Stanislaus Michalowicz.

Third. That the defendant may be, by the order of this court, required to pay unto the complainant a certain sum of money per month, pending the final hearing of this cause, for the maintenance and support of herself and minor children.

Fourth. That the defendant, by a final decree of this honorable court, be required to pay unto the complainant such sum of money per month as to the court may seem meet and proper, for the support and maintenance of herself, and for the care, support and education of their minor children, as well as a reasonable counsel fee and costs of this suit.

Fifth. And your complainant prays for such other relief as the nature of the case may require, and to this court seems meet and proper.

The defendant to this bill of complaint is Stanislaus Michalowicz, and the co-respondent is Martha Johnson.

TEODOZIA MICHALOWICZ,  
*Complainant.*

JULIUS I. PEYSER,  
*Solicitor for Complainant.*

5 DISTRICT OF COLUMBIA, ss:

I, Teodozia Michalowicz, do solemnly swear that I have read the foregoing bill of complaint by me subscribed and know the contents thereof; that the matters and facts therein stated as of my personal

knowledge are true, and those stated upon information and belief I believe to be true.

TEODOZIA MICHALOWICZ.

Subscribed and sworn to before me this 9th day of November A. D. 1903.

[NOTARIAL SEAL.]

JOSEPH SALOMON,  
*Notary Public, D. C.*

*Affidavit Showing Defendants are Non-residents.*

Filed Dec. 16, 1903.

In the Supreme Court of the District of Columbia, Holding a Special Term for Equity Business.

MICHALOWICZ	} Equity. No. 24298.
vs.	
MICHALOWICZ ET AL.	

DISTRICT OF COLUMBIA, *To wit:*

I, Wacław Urbanski, on oath depose and say that I am acquainted with the defendant Stanislaus Michalowicz and know that he is now living at North Leavitt street, in the city of Chicago, State of Illinois. The said defendant formerly lived in the city of Washington, but has been living in Chicago for a period of about one year. I further desire to say that the co-respondent named in above entitled cause, Martha Johnson, is now living in Rosslyn, Alexandria county, Virginia, and to the best of my knowledge has always resided in the place aforementioned and is a non-resident of the District of Columbia.

WACŁAW URBANSKI.

Subscribed and sworn to before me this 16th day of December, A. D. 1903.

[NOTARIAL SEAL.]

GUY H. JOHNSON,  
*Notary Public, D. C.*

*Order of Publication.*

Filed Dec. 17, 1903.

In the Supreme Court of the District of Columbia, Holding a Special Term for Equity Business.

TEODOZIA MICHALOWICZ	} Equity. No. 24298.
vs.	
STANISLAUS MICHALOWICZ ET AL.	

The object of this suit is to obtain an absolute divorce on the grounds of adultery. On the motion of the complainant, it is this



17th day of December, A. D. 1903, ordered, that the defendants,  
 Stanislaus Michalowicz and Martha Johnson, cause their ap-  
 7 pearance to be entered herein on or before the fortieth day,  
 exclusive of Sundays and legal holidays, occurring after the  
 day of the first publication of this order; otherwise the cause will  
 be proceeded with as in case of default. This notice is to be pub-  
 lished in the Washington Law Reporter and the Washington Times.

By the court:

THOS. H. ANDERSON,  
*Associate Justice.*

JULIUS I. PEYSER, *Solicitor.*

*Affidavit of Mailing of Notice, etc.*

Filed Feb. 16, 1904.

In the Supreme Court of the District of Columbia, Holding a Spe-  
 cial Term for Equity Business.

TEODOZIA MICHALOWICZ, Complainant,	}	Equity. No. 24298.
vs.		
STANISLAUS MICHALOWICZ, Defendant, and Martha Johnson, Co-respondent.		

DISTRICT OF COLUMBIA, ss:

I, Julius I. Peyser, being first duly sworn according to law, depose  
 and say, that I am the attorney for the complainant in the above  
 entitled cause; that on, to wit, the sixth day of January, A. D. 1904,  
 I mailed to Stanislaus Michalowicz and Martha Johnson, the de-  
 8 fendants in the above entitled cause, post-paid, a copy of the  
 Washington Law Reporter of December 25th, 1903, and a  
 copy of the Washington Times of December 24th, 1903, in  
 which papers there was contained the order of court of the 17th of  
 December, 1903; that the said papers were addressed to Stanislaus  
 Michalowicz, number 1149 North Leavitt street, Chicago, Ills., and  
 to Martha Johnson, Rosslyn, Alexandria county, Virginia, which  
 said addresses are the last known places of residence of the said  
 defendants.

JULIUS I. PEYSER.

Subscribed and sworn to before me this 7th day of January,  
 A. D. 1904.

JOSEPH SALOMON,  
*Notary Public, D. C.*

[NOTARIAL SEAL.]

*Order Appointing Examiner, etc.*

Filed Feb. 16, 1904.

Supreme Court, District of Columbia.

TEODOZIA MICHALOWICZ	}	Equity No. 24298, Docket No. —.
vs. STANISLAUS MICHALOWICZ ET AL.		

It appearing to the satisfaction of the court that proofs of publication have been filed against the absent defendants in the above-entitled cause, it is therefore, this 16th day of February, 9 A. D. 1904, adjudged and ordered by the court, that this cause be, and the same hereby is referred to Thos. H. Fitnam, an examiner in chancery of this court, for the purpose of taking testimony in said cause, and it is further ordered that Joseph D. Sullivan be and he is hereby assigned as attorney to appear for the defendant- and defend the said cause in *the* accordance with section 982 of the Code of Law of the District of Columbia.

ASHLEY M. GOULD, *Justice.**Stipulation.*

Filed Jan. 31, 1905.

In the Supreme Court of the District of Columbia.

TEODOZIA MICHALOWICZ	}	Equity. 24298.
vs. STANISLAUS MICHALOWICZ ET AL.		

It is hereby stipulated and agreed by and between counsel for the respective parties to the above entitled cause, that the abstract of evidence which has been prepared may be used as part of the record on appeal in lieu of the original testimony.

JULIUS I. PEYSER,  
*Solicitor for Complainant.*  
JOSEPH D. SULLIVAN,  
*Solicitor for Defendant.*

Jan. 30th, 1905.

10

*Testimony on Behalf of Complainant.*

Filed Jan. 31, 1905.

In the Supreme Court of the District of Columbia.

TEODOZIA MICHALOWICZ

vs.

STANISLAUS MICHALOWICZ, MARTHA JOHNSON.

} Equity. No. 24298.

TEODOZIA MICHALOWICZ, the complainant, a witness of lawful age was duly sworn and examined; she stated that she was married to Stanislaus Michalowicz, the defendant, on July 4, 1898, and that she has lived in the city of Washington, District of Columbia, for the past five years; they had two children one of whom is dead. She last saw her husband about over two years ago, but found that it was impossible to live with him as woman should on account of the fact that he had a sickness, also that he beat her and mistreated her. She did not know that he had a sickness when she last cohabited with him after the last child was born. She stated that it was about three years ago when she first found that he had a sickness and she discovered it about two months after the time that he stated he had it, which was sometime in July 1900. And when she found that the sickness of which she spoke was a venereal disease she refused to live with him. He then informed her that he had caught the disease from a colored woman who lived in Rosslyn, Virginia.

On cross-examination the witness stated that she lived three years with her husband after marriage, she did not say that he was living with a woman in Rosslyn, but only that he had something to do with a colored woman, after which he told her, (the complainant) that he went to the hospital to be treated. After he returned from the hospital he wanted to live with her but she refused because he was not cured of the disease.

On redirect examination she stated that the defendant told her that he was well of the disease but she discovered that he was still suffering from the disease. She did not know the exact nature of the disease but she knew she could not live with him again.

Mr. VACLAV URBANSKI a witness of lawful age was duly sworn and examined; he stated that he was the brother of the complainant and had lived in this country for a period of six years, he has known the defendant about five years and the last time he saw him to speak to was about three years ago. The defendant informed him that he went to Rosslyn and had something to do with a colored woman who lived there. Witness stated that he lives in the house with his sister, the complainant, and that the defendant left his sister

about three years ago. The doctor was then attending the defendant. Witness further says that the defendant went to the hospital when he had the sickness. He came from the hospital and wanted to live with the complainant but she refused so to do as soon as she discovered the nature of the disease from which he was suffering. Witness cannot say whether his sister knew it or not, but he knows that his sister, the complainant, refused to live with the defendant as a wife should. He never spoke to him much about the nature of the sickness, but the defendant informed him that he went over to Rosslyn to see a colored woman and had something to do with her.

12 On cross-examination witness said that he never saw the defendant after he left the complainant nor did he ever see him beat the complainant nor has he seen him since. The conversation with the defendant took place about a week or ten days after he came from Rosslyn and he told the witness that he had sexual intercourse with the woman in Rosslyn. Witness could not say that he contracted the disease with the woman at Rosslyn, but only relied upon the statement made by the defendant. The defendant left complainant in the fall that the last child was born, the said child is still living and the doctor attends the child very often. Of his own personal knowledge the witness does not know that the defendant ever had sexual intercourse with any woman.

Dr. SIGMUND A. CZARRA a witness of lawful age was duly sworn and examined; he stated that he was a physician by profession and had practised medicine in the District of Columbia, for the past twelve —, that he knew the complainant and had treated her, that he also knew the defendant, the husband, and stated that he first saw him about three years ago but that he is not positive of the fact. The question was asked if the doctor remembered what he treated the defendant for, and Mr. Sullivan, the attorney for the defendant objected on the ground that the doctor was not compelled to testify if the knowledge was gained in a professional capacity. The doctor further stated that he made a specialty of chronic diseases, and he stated that he did not make a specialty of venereal diseases but that his specialty embraced much more than that. He stated that he could not answer anything in favor or against

the parties to this case and that he thinks it was about three  
13 years ago when the gentleman first came to see him. He stated that he remembered the lady, the complainant, coming down to his office but could not say whether she came by herself or was brought by her husband. Counsel informed the witness that facts coming to his knowledge in a professional capacity would not be admissible under and by virtue of a certain section of the Code of Laws. The doctor stated that he does not positively remember who brought the lady, that he does remember that she got medicine from him two or three times.

Cross-examination waived.

Dr. ERNEST A. SELCHHAUSEN a witness of lawful age was duly sworn and examined; witness stated that he was a physician by profession and had practised medicine in the District of Columbia for twenty-five years, that he knew the defendant in this case and had given him medical treatment. The complainant's counsel asked the question, the nature of his sickness; the attorney for the defendant objected on the ground that the defendant did not consent to witness testifying. The doctor also said he would rather not testify unless required by the court. The doctor said it was so long ago that he did not remember all the facts of the case.

Cross-examination waived.

(Counsel for complainant announced that the testimony on behalf of complainant was closed, and counsel for defendant stated that he had no testimony to offer on behalf of the defendant.)

*Further Testimony Taken on Behalf of the Complainant.*

14 HENRY DOROB, a witness of lawful age was duly sworn and examined; stated that he is a shoemaker by trade, and that he has known the defendant for a period of over three years. That he does not know where the defendant is now living; but that the defendant is also a shoemaker and that he once worked for the defendant. He stated that he went over to Rosslyn with the defendant, it was about two or three years ago; went over there to get some beer, to drink and have a good time. They went to a place where colored women were and had a good time. That was about ten o'clock p. m. Witness stated that he stayed at the place until about eleven o'clock. He saw the defendant with a colored woman drinking, and he, the witness went home but defendant remained in the place. Was a common sort of a place where colored people go. Does not know how long defendant stayed in the place but defendant told witness about three days after that time that he had caught a sickness from a colored woman he saw over there. Does not remember how long defendant was sick but appears he was sent to a hospital on account of it. Knows he was swollen up and that he was taking medicine for the said sickness, sickness was making defendant look very bad, and defendant told witness that it was a disease that affected his male organ.

Cross-examination waived.

Mrs. TEODOZIA MICHALOWICZ, the complainant again took the stand and stated that she did not cohabit with the defendant after she discovered that he had a venereal disease. He confessed and told her that he had a disease and that he contracted it over in Virginia, with a colored woman. That he was there drinking and having a good time and that he caught the disease at that time.

15 He went over to the place with Mr. Doroba. Did not cohabit with the defendant after he returned from the hospital nor did she cohabit with him the five months prior to that time.

VACLAY URBANSKI again being called said that complainant refused to live with defendant on account of the disease which defendant had; that defendant told witness that he had been to Rosslyn and had a good time and a few days after he told witness that he caught a disease from a colored woman but refused to say what kind of a house it was except that it was in Rosslyn. He did not say exactly the nature of the disease but spoke of suffering very much and said it was a disease of his male organ, which was contracted from the colored woman.

Cross-examination waived.

*Decree Dismissing Petition for Divorce.*

Filed Dec. 13, 1904.

In the Supreme Court of the District of Columbia.

THEODOZIA MICHALOWICZ	}	No. 24298. Equity.
vs.		
STANISLAUS MICHALOWICZ ET AL.		

This cause coming on for final hearing, and having been argued by counsel and duly considered, it is by the court, this thirteenth day of December, A. D. 1904, adjudged ordered and decreed that the petition for divorce in this case be, and the same is, hereby dismissed, and the petitioner having prayed an appeal to the  
 16 Court of Appeals, the bond, or deposit for costs of said appeal, is fixed at the sum of fifty dollars.

THOS. H. ANDERSON, *Justice.*

*Memorandum.*

December 28, 1904.—Appeal bond filed.

*Request for Transcript.*

Filed Jan. 31, 1905.

Supreme Court of the District of Columbia.

MICHALOWICZ	} Equity. 24298.
v.	
MICHALOWICZ ET AL.	

The clerk of the court will please prepare a transcript of the record of the above entitled cause and include therein for Court of Appeals the following papers :

Bill of complaint	filed Nov. 9, 03
Affidavit showing def'd's non-residents	" Dec. 16, 03
Order of publication	" " 17, 03
Affidavit of mailing notice	" Feb. 16, 04
17 Order appointing examiner	filed Feb. 16, 04
Decree dismissing bill	" Dec. 13, 04
Abstract of testimony & stipulation	" Jan. 31, 04

J. I. PEYSER,  
*Sol. for Complainant.*

18 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, } ss :  
District of Columbia, }

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 17, inclusive, to be a true and correct transcript of the record, as per directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 24,298, in equity, wherein Teodozia Michalowicz is complainant, and Stanislaus Michalowicz is defendant and Martha Johnson is co-respondent, as the same remains upon the files and of record in said court.

In testimony whereof, I hereunto subscribe  
Seal Supreme Court my name and affix the seal of said court, at  
of the District of the city of Washington, in said District, this  
Columbia. 8th day of February, A. D. 1905.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover : District of Columbia supreme court. No. 1516. Teodozia Michalowicz, appellant, vs. Stanislaus Michalowicz et al. Court of Appeals, District of Columbia. Filed Feb. 8, 1905. Henry W. Hodges, clerk.

APR 11 1905

*Henry W. Hodges*  
*Attorney*

# In the Court of Appeals OF THE DISTRICT OF COLUMBIA.

JANUARY TERM, 1905.

**No. 1516**

TEODOZIA MICHALOWICZ,

*Appellant,*

*vs.*

STANISLAUS MICHALOWICZ,

MARTHA JOHNSON,

*Appellees.*

**BRIEF FOR APPELLANT.**

JULIUS I. PEYSER,

*Solicitor for Appellant.*





# In the Court of Appeals

OF THE DISTRICT OF COLUMBIA.

JANUARY TERM, 1905.

---

**No. 1516**

---

TEOPOZIA MICHALOWICZ,	}
<i>Appellant,</i>	
<i>vs.</i>	
STANISLAUS MICHALOWICZ,	
MARTHA JOHNSON,	}
<i>Appellees.</i>	

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## **BRIEF FOR APPELLANT.**

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This is an appeal from a final decree of the Supreme Court of the District of Columbia, dismissing a bill of complaint filed by the appellant for an absolute divorce on the ground of adultery.

### **STATEMENT.**

The parties to this appeal were married on the 4th day of July, 1898, at the City of Baltimore (Rec., p. 7). The

testimony shows that Stanislaus Michalowicz contracted a venereal disease from a colored woman who lived in Rosslyn (Rec., pp. 7, 8, 9), and that he confessed and admitted to his wife, his brother-in-law, and the witness Doroba that he had the disease, and that he went to the hospital to be treated; the appellant, immediately upon discovering the fact ceased to cohabit with him (Rec., p. 9), and has not cohabited with him since that time (Rec., pp. 9, 10).

## ARGUMENT.

### I.

The court erred in refusing to admit as evidence the voluntary admissions and confessions of the defendant not made for the purpose of suit.

### II.

The court erred in not inferring adultery when the defendant contracted a venereal disease after marriage.

### III.

The court erred in dismissing the bill of complainant.

## POINTS OF LAW.

FIRST. Admissions and confessions of adultery are admissible if not made for the purpose of the suit, and when there is no ground to suspect collusion.

A divorce for the cause of adultery was decreed, when the only evidence was the confession of the guilty party, there being no reason to suspect collusion.

Judge Morton said:

“That he had advised with the other judges on

the question, whether the libellee's confession of adultery was alone sufficient to authorize a decree of divorce; that the reason for requiring other evidence is, in general, to prevent collusion; that the circumstances here proved by other evidence than the confessions showed there could be no collusion; and that the court were of the opinion that the proof of adultery was sufficient."

*Billing vs. Billing*, 11 Pick. (Mass.), 461.

In the case of *Baker vs. Baker*, 13 Cal., 94, Judge Field, delivering the opinion of the court, stated:

"But the public can have no interest in suppressing the truth; and as the means of its ascertainment; the confession of parties against their interest has always been regarded as evidence of the most important character. And when all presumptions of collusion are repelled, and, from circumstances it appears reasonably certain that the confession made is true, the ground of the rule of exclusion in cases of divorce is answered, and there can be no reason for refusing consideration of the confession: thus it has been held, observed Dr. Lushington, in *Harris vs. Harris*, (2 Hagg. Ecc., 409) 'that confessions, when perfectly free from all taints of collusion, and when confirmed by circumstances, ranks among the highest species of evidence.' It has been so held on different occasions. It was most truly stated by Lord Stowell, in the case of *Mortimer vs. Mortimer*, 'that the court was inclined to allow confessions, when not affected by collusion, as evidence of the greatest importance,' and the grounds upon which the court laid down the principle are too apparent to need any explanation."

Any admissions which were made by the husband, may safely receive their full weight.

*Johnson vs. Johnson*, 14 Wend. (N. Y.), 637.

The foundation of the rule which forbids the granting of a decree of divorce on the unsupported confession of the party is the fear of collusion and imposition on the court; hence, when the confessions are made under circumstances which entirely preclude suspicion of collusion or imposition, the confession will be received and a decree granted thereon.

*Johnson vs. Johnson*, 29 Ga., 718.

*Robbins vs. Robbins*, 100 Mass., 150.

*Machem vs. Machem*, 6 Pa. Stats., 337.

*Evans vs. Evans*, 41 Oal., 103.

Shelford's "Marriage and Divorce," pp. 407-411.

It seems, therefore, that the authorities agree upon the subject that where the confessions or admissions of adultery are perfectly free from collusion, and where they are confirmed by circumstances and conduct, they rank among the highest species of evidence.

*Mongomery vs. Montgomery*, 3 Barb., 132.

22 How. Pr., 364.

"In an action of divorce for adultery, the confession of the defendant is sufficient, where it appears from the confession itself and from other evidence that there could be no collusion."

*Tewksbury vs. Tewksbury*, 5 Miss., 109.

"If all just suspicion of collusion is removed, a divorce may be granted on evidence of the defendant's admissions of adultery."

*Madge vs. Madge*, 42 Hun. (N. Y.), 524.

SECOND. Adultery may be inferred where the defendant

contracts a venereal disease after marriage, or had a venereal disease too long after marriage to have been the result of intercourse before marriage.

The complaint states that the defendant was afflicted with a venereal disease; whether this disease is evidence of adultery is dependent upon circumstances, such as the length of time since the marriage. Therefore, under the circumstances, where the disease is long after, it is *prima facie* evidence of adultery.

Hopkins *vs.* Hopkins, 1 Haggard Eng. Ecc., 325.

North *vs.* North, 5 Miss., 320.

Johnson *vs.* Johnson, 14 Wend. (N. Y.), 637.

Where the husband, long after marriage, communicates a venereal disease to the wife, in such case the fact is *prima facie* evidence of adultery having been committed, although when, where, or with whom is not proved. The innocent party, upon proof of that fact, may rest his or her case.

Clark *vs.* Clark, 7 Robertson (N. Y.), 278.

If the criminal intention is shown, and the opportunities ample, adultery will be presumed.

40 Mich., 493.

21 N. J. Eq., 36 and 60.

It is, therefore, respectfully submitted that the decree appealed from should be reversed, and that this cause should be remanded with directions to grant to the complainant the relief for which she prays.

JULIUS I. PEYSER,  
*Solicitor for Appellant.*



APR 14 1905

*Henry W. Hodges,*  
*to Linn*

# In the Court of Appeals

OF THE DISTRICT OF COLUMBIA.

JANUARY TERM, 1905.

---

**No. 1516.**

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TEODOZIA MICHALOWICZ, APPELLANT,

vs.

STANISLAUS MICHALOWICZ, MARTHA JOHNSON,  
APPELLEES.

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**BRIEF FOR APPELLEES.**

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The evidence in support of the petition for divorce in this case consists almost entirely of admissions made by the defendant, Stanislaus Michalowicz, appellee here, to his wife and to two other witnesses that he had committed adultery with a colored woman, at some time not fixed by the evidence, and had contracted a venereal disease. On the whole case, it is submitted that there is no sufficient proof, either of the act of adultery or of the existence of the venereal disease, to warrant the granting of the relief prayed in the petition.

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**ARGUMENT.**

The entire testimony of the wife is to be rejected under the rule established by this court.

Lenoir vs. Lenoir, 32 Wash. Law Rep. 456.



Since the husband, if called as a witness and sworn in the case, would not have been permitted to give evidence, it would appear that his admissions should not be received in evidence.

Even if the admissions made by the appellee Michalowiez to the witnesses Urbanski and Doroba (Rec. pp. 8, 9, 10), are proper evidence tending to show his guilt, they are not sufficient upon which to grant a decree for divorce.

*Clutch vs. Clutch*, 1 N. J. Eq. 474.

*Betts vs. Betts*, 1 Johns. Ch. 198.

*Derby vs. Derby*, 21 N. J. Eq. 36.

*Kloman vs. Kloman*, 62 N. J. Eq. 153.

"In cases of this kind the court takes the confession of the parties with very great caution, and they are never held sufficient proof, without strong corroborating circumstances."

*Clutch vs. Clutch*, 1 N. J. Eq. 474.

The existence of a venereal disease, even if we assume that it has been thoroughly proven to have existed in the appellee, can not be made the ground for a decree, as it may have existed consistently with his innocence of the charge of the petition.

*Humberger vs. Humberger*, 46 How. Prac. 346.

*Ferguson vs. Ferguson*, 3 Sand. (N. Y.) 307.

*Glenn vs. Glenn*, 87 Mo. App. 377.

As long as the fact is capable of innocent interpretation such will be given to it.

It is respectfully submitted that the decree dismissing the petition for divorce should be affirmed.

JOSEPH D. SULLIVAN,  
*Attorney for Appellees.*

